

United States Courts
Southern District of Texas
FILED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

September 17, 2020

David J. Bradley, Clerk of Court

UNITED STATES OF AMERICA

v.

JOHN FANSLER

Criminal No. **4:20-CR-450**

CRIMINAL INFORMATION

THE UNITED STATES ATTORNEY CHARGES:

At all times relevant to this Information:

HP GAS AND DEFENDANT JOHN FANSLER

1. HP Gas, LLC., ("HP Gas") was an industrial gas producer licensed as a Texas limited liability company by the Texas Comptroller of Public Accounts in 2011 and has a facility located at 6701 W. Bay Road, Baytown, Texas. HP Gas Products, Inc., was a domestic for-profit corporation also associated with this location and was forfeited in or about 2017.

2. Since approximately 2009-2010, HP Gas and John Fansler manufactured chemicals, including but not limited to Hydrogen Cyanide and Cyanogen Chloride at the Baytown location and had contracted with the Department of Defense for the manufacture of Cyanogen Chloride as recently as 2015. Manufactured chemicals were placed in lecture bottles or compressed gas cylinders and shipped offsite once produced. Fansler received 50% of HP Gas profits made from the chemical manufacturing and was identified as the Principal and Registered Agent for HP Gas, LLC.

3. Hazardous waste from the production of Hydrogen Cyanide and Cyanogen Chloride were

placed in drums or barrels by HP Gas and Fansler and stored on the HP Gas facility.

4. On February 20, 2018, Chambers County Sheriff's Office was dispatched to the HP Gas facility following a reported explosion. Two structures onsite, one newer and one dilapidated in the back of the property contained many rusted gas cylinders. The Baytown Fire Department/Hazardous Materials Unit determined that one of the rusted cylinders exploded in the dilapidated structure and had been leaking an unknown poisonous gas.

5. A partial inventory of chemicals stored at the site was conducted in April and May, 2018. Approximately 1154 cylinders and or chemical containers were observed, some of which contained extremely dangerous chemicals in severely degraded cylinders. Approximately 16 containers of pure Hydrogen Cyanide were mixed in with containers at various locations and had become unstable when stored outside a climate-controlled environment. Additionally, 2 cylinders of Hydrogen Fluoride were encountered, which reacts with cylinder walls and appeared to have been the cause of numerous cylinder failures and explosions.

6. HP Gas did not have a permit issued by EPA or TCEQ to store hazardous waste at the HP Gas facility.

7. Between on or about June 25, 2018, and on or about January 23, 2019, EPA conducted a removal action of waste stored at the HP Gas Facility. In total, approximately 2,652 containers consisting of approximately 2,615 cylinders, 34 drums and multiple jars and canister containers of waste were removed from the HP Gas facility. Much of the waste was found to be hazardous. The approximate cost of the EPA removal action is over \$4.4 million.

THE RESOURCE CONSERVATION AND RECOVERY ACT

8. The Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901 et seq. (hereinafter, "RCRA"), was enacted in 1976 to address a growing nationwide problem of industrial and municipal waste contamination. RCRA was designed to protect human health and the environment and provided controls on the management and disposal of hazardous waste.

9. RCRA, and the regulations promulgated thereunder, prohibit the treatment, storage, and disposal of hazardous waste, without a permit issued by the U.S. Environmental Protection Agency (EPA) or by an authorized state. In order to be a regulated hazardous waste under RCRA, the material must first be a solid waste. The term solid waste, as used in RCRA, includes any discarded solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural activities. 42 U.S.C. § 6903(27). A discarded material is any material that is abandoned by being accumulated, stored, or treated in lieu of being abandoned by being disposed of, burned, or incinerated. 40 C.F.R. § 261.2(a)(2)(i)(A) and (b).

10. Both federal and state regulations provide that a waste is "hazardous waste" if it exhibits one or more of the characteristics of ignitability, corrosivity, reactivity, or toxicity as defined in 40 C.F.R. §§ 261.21- 24 and incorporated by reference in T.A.C. Title 30, Part I, Chapter 335, Subchapter R.

11. The EPA can authorize states to administer and enforce their own hazardous waste management program in lieu of the federal program. 42 U.S.C. § 6926. The EPA has authorized the State of Texas to conduct a hazardous waste program administered by the Texas Commission on Environmental Quality (TCEQ), and to issue permits for the storage of hazardous waste. The EPA retains enforcement authority over the State's authorized hazardous waste program.

COUNT ONE

The United States Attorney realleges paragraphs 1 through 11 and incorporates them herein. No later than or about November, 2017 in Baytown, Texas, within the Southern District of Texas, the defendant,

JOHN FANSLER

did knowingly store and caused to be stored at the HP Gas facility, hazardous wastes, namely, corrosive, reactive and toxic waste, without a permit issued pursuant to RCRA. All in violation of Title 42, United States Code, Section 6928(d)(2)(A), and Title 18, United States Code, Section 2.

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